

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

JAN 26 2016

Clerk, U.S. Courts
District Of Montana
Missoula Division

KRISTIN KANE KELLER,

Petitioner,

vs.

MARTIN FRINK, et al.,

Respondents.

CV 15-59-H-DLC-JTJ

ORDER

United States Magistrate Judge John Johnston entered findings and recommendations in this matter on October 13, 2015, recommending dismissal of Petitioner Kristin Kane Keller's ("Keller") Petition for Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2254. Keller filed an objection to the findings and recommendations on October 26, 2015, and so is entitled to de novo review of those findings and recommendations to which he specifically objects. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). "Clear error exists if the Court is left with a definite and firm conviction that a mistake has been committed." *United States v.*

Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Notwithstanding the above, “[w]here a petitioner’s objections constitute perfunctory responses argued in an attempt to engage the district court in a rehashing of the same arguments set forth in the original habeas petition, the applicable portions of the findings and recommendations will be reviewed for clear error.” *Rosling v. Kirkegard*, 2014 WL 693315 at *3 (D. Mont. Feb. 21, 2014) (citations omitted).

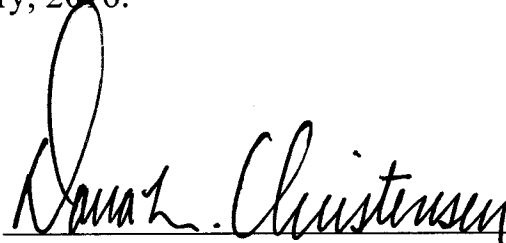
Having reviewed Keller’s objection, the Court finds that he fails to articulate any specific issue with Judge Johnston’s reasoning, and instead attempts to assert a variation of his argument of ineffective assistance of counsel. Accordingly, the Court reviews Judge Johnston’s findings and recommendations for clear error and, finding none,

IT IS ORDERED that Judge Johnston’s findings and recommendations (Doc. 9) are ADOPTED IN FULL. Keller’s Petition for Writ of Habeas Corpus (Doc. 1) is DISMISSED WITH PREJUDICE as time barred and procedurally defaulted without excuse.

IT IS FURTHER ORDERED that the Clerk of Court shall enter by separate document a judgment of dismissal.

IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

DATED this 26th day of January, 2016.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looped initial "D".

Dana L. Christensen, Chief Judge
United States District Court